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Statement of  
**JESSE K. SOUKI**  
Director, Office of Planning  
Department of Business, Economic Development, and Tourism  
before the  
**SENATE COMMITTEE ON WATER, LAND, AND HOUSING**  
**AND**  
**HOUSE COMMITTEE ON FINANCE**  
Tuesday, April 3, 2012  
3:00 PM  
State Capitol, Conference Room 308

in consideration of  
**SB 2335 HD1**  
**RELATING TO SPECIAL MANAGEMENT AREAS.**

Chair Oshiro, Vice Chair Lee, and Members of the House Committee on Finance.

The Office of Planning (OP) administers Hawaii Revised Statutes (HRS) Chapter 205A, Hawaii's Coastal Zone Management (CZM) law. The Special Management Area (SMA) permitting system is part of federal and state approved Hawaii CZM Program to achieve the following: (1) to avoid permanent losses of valuable resources and the foreclosure of management options; (2) to ensure that adequate access, by dedication or other means, to public owned or used beaches, recreation areas, and natural reserves is provided; and (3) to preserve, protect, and where possible, to restore the natural resources of the coastal zone of Hawaii.

SB 2335 HD1 amends the definition of "development" under HRS §205A-22 to exclude "Final subdivision approval; provided that in counties with a population of less than 500, 000 persons, but more than 160,000 persons, if a special management area use permit is required, it

shall be processed concurrently with an application for tentative subdivision approval or after tentative subdivision approval and before final subdivision approval.” The proposed amendments add the conditional language for specific counties to the current exclusion of “final subdivision approval” as passed by this legislature last year and subsequently enacted into law as Act 153, Session Laws of Hawaii (SLH) 2011.

OP has the following comments on SB 2335 HD1.

Based on the range of county population size proposed by SB 2335 HD1, using 2010 U.S. Census figures for Hawaii and its counties, the County of Hawaii must (1) concurrently process SMA permits with tentative subdivision approvals, or (2) process the SMA permits after tentative subdivision approvals but before final subdivision approvals. The other counties must complete the SMA process prior to or concurrently with tentative subdivision approval.

Each county administers the SMA permitting process through its planning department. The four counties have their authorities to decide when the SMA permit is required for the division or subdivision of land. We defer further comments on this to the counties.

Thank you for the opportunity to comment on this measure.



**SB2335 HD1**  
**RELATING TO SPECIAL MANAGEMENT AREAS**  
House Committee on Finance

April 3, 2012

3:00 p.m.

Room 308

The Office of Hawaiian Affairs (OHA) **OPPOSES** SB2335 HD1, which would allow for concurrent processing of special management area (SMA) permits with an application for tentative or preliminary subdivision approval in Hawai'i County, and Maui County in the near future. Concurrent processing deemphasizes the specific planning considerations that must accompany subdivision planning for projects in the SMA.

SMAs are the coastal lands of Hawai'i. The current language contained in Hawaii Revised Statutes (HRS), Sections 205A-21 to -33 requires a project proponent to seek an SMA permit early in the process of planning for a project in an SMA. An SMA permit must be received before "development" may occur, which is defined by statute as, among other things, a "change in density or intensity of land, including but not limited to the division or subdivision of land." (HRS § 205A-22) Currently, an SMA permit is required prior to preliminary subdivision review. In contrast, some actions are explicitly excluded from the definition of "development," such as *final* subdivision approval, which is granted as a ministerial act after the preliminary subdivision review conditions are met. Through this distinction, the government regulates certain actions in the SMA through permitting, while excluding actions with less potential for negative impacts.

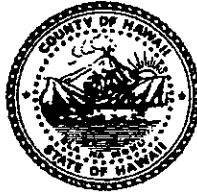
Actions deemed to be development must meet certain guidelines unique to the SMA, including public recreation access and proper solid/liquid waste disposal. SMA approval also requires certain environmental impacts to be minimized before a project can be approved, including impacts that would reduce the size of public beaches, restrict coastal access, block lines of sight to the ocean, and adversely affect water quality, fisheries, or wildlife habitat.

The general guidelines considered under Chapter 205A, such as line of sight, beach access, and waste disposal, affect the basic planning and layout for a subdivision in the SMA. As such, SMA considerations should be incorporated at the very beginning of the subdivision approval process, with coastal development conditions serving as the foundation for subsequent, detailed subdivision planning. The changes proposed by SB2335 HD1 would dilute the protections established for SMAs, delay the consideration of SMA guidelines during a crucial part of planning, and complicate development.

Based on publicly available data from the 2010 Census, limiting applicability to “counties with a population of less than 500,000 persons, but more than 160,000 persons” means that Hawai‘i County, with a population of 185,079, would be subject to the concurrent processing provision. In addition, Maui County, with a 2010 Census population of 154,834, will likely qualify for this same provision in the near future. Both counties have large rural, coastal areas with much to lose if things like line-of-sight to the ocean, beach access, and coastline marine habitats are not considered from the start of subdivision planning in the SMA.

Therefore, OHA urges the committees to HOLD SB 2335. Mahalo for the opportunity to testify on this measure.

William P. Kenoi  
*Mayor*



BJ Leithead Todd  
*Director*

Margaret K. Masunaga  
*Deputy*

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April 2, 2012

Honorable Marcus R. Oshiro, Chair  
and Members of the Committee on Finance  
The House of Representatives  
Hawai'i State Capital  
415 South Beretania Street  
Honolulu, HI 96813

Dear Chair Oshiro and Committee Members:

**SUBJECT: Testimony in Opposition of Senate Bill 2335, HD1, Relating to Special Management Areas**  
**B.J. Leithead Todd, Planning Director, County of Hawai'i**  
**Hearing scheduled for April 3, 2012; 3:00 p.m.; Conference Room 308**

The purpose of this measure is to expedite and facilitate permitting for projects in special management areas by excluding from the definition of "development" tentative or preliminary subdivision approval to allow counties to concurrently process subdivision and special management area permits. I oppose this bill for the following reasons:

First, the bill provides that counties with a population of less than 500,000 persons but more than 160,000 persons shall process a Special Management Area (SMA) use permit and an application for tentative subdivision concurrently. The population of the counties is arbitrary and does not affect the impacts of a project on the SMA approval and should not be a consideration during the SMA permitting process.

Second, each county is unique and has adopted rules for the processing of various applications. As provided in Hawai'i Revised Statutes 205A-29, the authority in each county shall adopt rules under Chapter 91 setting the SMA use permit application procedures, conditions under which hearings must be held, and the time periods within which the hearing and action for special management area use permits shall occur. Therefore the authority, the county planning commission, is the most appropriate body to adopt rules for concurrent processing of SMA use permits.

Honorable Marcus R. Oshiro, Chair  
and Members of the Committee on Finance  
The House of Representatives  
Hawai'i State Capital  
April 2, 2012  
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Thank you for the opportunity to submit testimony for this measure. I ask that the Committee consider my comments and concerns and hold Senate Bill 2335, HD1.

Sincerely,

A handwritten signature in black ink, appearing to read "BJ Leithhead Todd", written in a cursive style.

BJ LEITHEAD TODD  
Planning Director

BJM:cs  
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cc: William P. Kenoi, Mayor  
County of Hawaii